



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-19592-21

In the matter of: 1, 108 GLADSTONE AVENUE
HAMILTON ON L8M2H9

Between: R & B Properties

Landlord

and

Gordon Thompson

Tenant

R & B Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Gordon Thompson (the 'Tenant') because the Landlord intends to do major repairs or renovations to the rental unit; and because they have been persistently late in paying their rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 27, 2021. The Landlord's Agent, Randy Dalton ('RD'), and the Landlord's Legal Representative, Francisco Gomez, attended the hearing. The Tenant's Legal Representative, Jessica Travers, and the Tenant, Gordon Thompson ('GT'), attended the hearing.

Determinations:

Preliminary issue:

1. At the outset of the hearing, the Tenant's Legal Representative raised the following preliminary issues:
 - a) R & B Properties is not a Landlord. In support of this position, the Tenant's Legal Representative relies on Board files TEL-97410-18, EAL-81351-19, and *Law Society of Upper Canada v. Chiarelli*, 2014 ONCA 391 ('*Chiarelli*').
 - b) The Tenant, Ashley Perry ('AP'), moved out of the rental unit and was not in possession of the rental unit when the application was filed. Therefore, she should be removed as a party to this application.
2. I find that R&B Properties is a Landlord pursuant to section 2 of the Residential Tenancies Act, 2006 (the 'Act'). I say this because the definition of "landlord" in the Act is broad and includes "any other person who permits occupancy of a rental unit". The uncontradicted testimony of RD is that R & B Properties is hired by the owner of the residential complex and they are responsible for all aspects of managing the property

including renting units to prospective tenants, collecting rent, taking complaints, responding to maintenance issues, giving tenants notices of termination for reasons set out in the Act, etc. Therefore, I am satisfied that R & B Properties permits occupancy of the rental unit.

3. TEL-97410-18 and EAL-81351-19 are not binding on me. *Chiarelli* is not applicable to the facts of this case. The issue decided by the Ontario Court of Appeal in *Chiarelli* was whether the appellant (who operated a property management company) has a right to self-represent (*Chiarelli*, at para. 25). In framing this issue, the court accepted that the appellant qualifies as a landlord pursuant to the Act.
4. With regards to the second preliminary issue, I am satisfied that AP was not in possession of the rental unit when the application was filed as required by the *Residential Tenancies Act, 2006* (the 'Act'), and therefore is removed as a party to the application. I say this because GT testified that he broke up with AP in May 2020 and she moved out of the rental unit. While DT testified that he had conversations with AP this past spring through emails and phone calls wherein she continued to represent herself as still living in the unit, this evidence is hearsay. I place more weight on GT's testimony which I found to be credible.

N13 notice of termination

5. For the reasons below, the Landlord's application to evict the Tenant on the N13 notice of termination is denied.
6. The N13 notice of termination given to the Tenant indicates that the Landlord plans to do extensive renovations that require vacant possession of the rental unit in order to:
 - a) Comply with an order from the Fire Department; and
 - b) Finish the basement, converting it to two bedrooms.
7. The Act requires the Landlord to compensate the Tenant in an amount equal to one month's rent or offer another rental unit acceptable to the Tenant (subsection 54(3) of the Act).
8. In this case, the Landlord did not compensate the Tenant because there is an order from the Fire Department requiring the Landlord to carry out certain renovations to bring the residential complex to code. While subsection 54(3)(d) of the Act provides that compensation is not required if the repair or renovation was ordered to be carried out under the authority of any other Act, the order from the Fire Department does not relate to the Landlord's plans to finish the basement and convert it to two bedrooms. Therefore, I find that the Landlord is required to pay compensation to the Tenant for the renovations to finish the basement.
9. Section 55.1 of the Act provides that the landlord is required to compensate the Tenant "no later than on the terminate date specified in the notice of termination". The termination date specified on the N13 notice of termination is January 31, 2021. Since the

Landlord did not pay compensation on or before this date, the request to terminate the tenancy on the N13 notice is denied.

N8 persistent late payment

10. The tenancy is month to month.
11. Rent is due on the first of each month.
12. The Tenant does not dispute he has persistently failed to pay the rent on the date it was due.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. In granting relief from eviction, I have considered that the Act is remedial, the Tenant has been living at the rental unit since 2013, this is the first application the Landlord has brought to evict based on the Tenant's persistent late rent payment and the Tenant's uncontradicted testimony that going forward he is able to pay the rent on time.

Costs

15. This application was previously before the Board on July 28, 2021. At that hearing, the Tenant's Legal Representative sought and was granted an adjournment, in part, to summons a witness.
16. The Landlord's Legal Representative requests costs in the amount of \$700.00 because the Landlord's Legal Representative did not summons said witness. The Landlord's Legal Representative takes the position that the Tenant's Legal Representative misled the Board to get an adjournment which resulted in delay and increased costs to the Landlord.
17. The Tenant's Legal Representative explained that the adjournment request was made in good faith. At that time, she had just been retained and intended to summon the Fire Marshall as a witness. However, after further discussions with the Fire Marshal she determined that he would not be able to provide relevant evidence.
18. I find that the Tenant's Legal Representative explanation to be reasonable. I do not find that the Tenant's Legal Representative misled the Board. Therefore, the Landlord's request for costs is denied.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that:

- a. The Tenant shall pay the full monthly rent on or before the first business day of each month, commencing January 1, 2022 and for 12 months thereafter up to and including December 1, 2022.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2021, they will start to owe interest. This will be simple interest calculated from January 1, 2022 at 2.00% annually on the balance outstanding.

2021 CanLII 149663 (ON LTB)

December 20, 2021
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.